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February 3, 2023

VIA ECF

The Honorable Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square, Room 430
New York, New York 10007

Re: Roche Freedman LLP v. Cyrulnik, Case No. 1:21-cv-01746 (JGK) (SN)

Dear Judge Netburn:

We write briefly concerning the RF Parties' latest improper submissions to the Court regarding their refusal to produce communications with Eric Rosen (Dkt. Nos. 349 and 350). At the January 31 conference, the Court stated that all but one of the Rosen documents did not appear to be privileged, but granted Mr. Bach's request solely to identify individual communications, if any, within the Rosen emails that the RF Parties were still claiming as privileged in light of the Court's guidance, along with specific authority for the RF Parties' claim that those business communications about how to best position themselves to oust their partner are privileged. Instead, after requesting an extra day for their submissions, the RF Parties took that opportunity to file what appears to be another full round of briefing, advancing new arguments and even submitting a brand-new declaration from Mr. Rosen in a misguided effort to persuade the Court to change its tentative ruling. We do not believe these submissions are what the Court permitted or intended (and we do not address the substance here), and indeed they appear to contradict the RF Parties' own sworn testimony that they did not contemplate litigation during the time period in question. (*Compare* Dkt. 349 ("Rosen was tasked with overseeing pre-litigation activities"), *and* Dkt. 350 ¶ 7 ("At that time, the Firm consulted me, solely in my capacity as General Counsel, to provide legal advice to the Firm to oversee a settlement overture, a FRE 408 communication, and to otherwise act as counsel to the Firm in its dispute with Cyrulnik."), *with* Dkt. No. 335 (Freedman testifying that "[m]y mind was nowhere near the obligation to preserve [documents] – again I didn't think it was even within the realm of possibility we would be litigating"). We respectfully request that – consistent with the Court's tentative findings during the January 31 conference – these documents be produced forthwith.

Respectfully submitted,

/s/ Kevin A. Cyrulnik

Kevin A. Cyrulnik

cc: Counsel of Record (via ECF)